

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3700 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHKUMAR MAGANBHAI MARWADI

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioner
MR RM DESAI for Respondent No. 1, 4
SERVED BY DS for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/12/97

ORAL JUDGEMENT

Petitioner before this Court is serving as Bench Clerk/Head Clerk under the respondent No. 3 since 1991. Under Government Resolution dated 29th March, 1997, a post of Registrar has been sanctioned in the office of respondent No. 3. Under the communication dated 2nd

April, 1997, the Government instructed the Commissioner of Higher Education to fill in the posts of Registrars sanctioned under the Resolution dated 29th March, 1997 by appointment of persons on deputation. Pursuant to the said communication, under order dated 2nd May, 1997, respondent No. 4 has been appointed as Registrar under the respondent No. 3 on deputation. Feeling aggrieved, the petitioner has preferred this petition.

2. Mr. Pujara, the learned advocate appearing for the petitioner has submitted that the petitioner has been serving in the tribunal since the year 1974. Initially, he was serving under the Secondary Education Tribunal as peon and was gradually promoted as typist. Since the year 1989, he has been serving under the respondent No. 3 and has been gradually promoted to the post of Bench Clerk/Head Clerk. Mr. Pujara has relied upon the Draft Recruitment Rules for appointment to the post of Registrar under respondent No.3. He has submitted that even under the draft recruitment rules, the petitioner is eligible for promotion to the post of Registrar. Pending this petition, the petitioner was directed to make a representation to the State Government in the subject matter of this petition. Upon petitioner's making such representation, same has been decided by the Government on 10th November, 1997. In the said decision, it is observed that the tribunal is the head of the department and that the petitioner was initially appointed by the tribunal and was gradually promoted by the tribunal. Thus, the tribunal is the competent authority to make appointments to the post of Registrar in accordance with the rules. Pursuant to the said decision, the petitioner has made representation to the Tribunal on 26th November, 1997. In my view, in absence of any statutory rules in force, draft rules shall be treated as executive instructions and shall have the same force as the statutory rules. Since the Government has clarified that the Tribunal is the competent authority to make appointment to the post of Registrar and since the petitioner has already made a representation to the Tribunal, I need not further deliberate on the matter. Suffice it to say that the petitioner shall pursue his representation made to the Tribunal and the Tribunal may decide the same as expeditiously as possible.

In above view of the matter, no further order is required to be made on this petition. Mr. Pujara, therefore, does not press this petition. Petition is disposed off as not pressed. Rule is discharged. There shall be no order as to costs.

Vyas